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President Clinton and Executive Orders

It's Not the *Number* of Orders, It's the *Weight* of Government

"Frustrated by a GOP-controlled Congress that lately has rebuffed him on almost every front, President Clinton plans a blitz of executive orders during the next few weeks, part of a White House strategy to make progress on Clinton's domestic agenda with or without congressional help." — *Los Angeles Times*, 7/4/98

" 'Stroke of the pen,' Paul Begala, an aide to Mr. Clinton, said in summarizing the approach. 'Law of the land. Kind of cool.' " — *New York Times*, 7/5/98

We have searched the Constitution closely but have been unable to find where the Framers authorized a President to issue "a blitz of executive orders." Nevertheless, it appears that President Clinton is making good on his promise to use executive power aggressively. In the 20th Century, executive orders and other executive directives have become an integral part of the American presidency — and they do, indeed, have the force of law.

President Clinton got off to a quick start. His first executive order was issued on his first day in office. One of his most recent executive actions, however, apparently was issued a little too quickly. Due to Congressional and public outrage, the President's May 14 order of federalism (E.O. No. 13083) seems to be on its way back to the drawing board. [For more details on this and on checking the president's executive power, see RPC paper, "Congressional Authority and Executive Power," 7/30/98]. However, *counting* executive orders is not as important as "*weighing*" them.

Even when they are counted, though, people differ about what they mean by the term "executive order". In some cases, the reference is to that species of presidential directive that is formally denominated an *executive order* and separately listed, numbered, and published in the *Federal Register*. In other cases, the term is used generically and seems to refer to almost any action that is taken by the Executive Branch if the President takes part or takes credit. When an administration promises "executive orders," we should look for all kinds of orders that are issued by the Executive Branch, not just those officially designated *executive orders*.

A mere counting of official *executive orders* is fundamentally inadequate to an understanding of executive power because a President has many more tools available to him than *executive orders*. Over the years, the *Code of Federal Regulations* has identified 14 types of presidential directives — and executive orders are not the most numerous and may not be the most important.

In calendar year 1997, for example, President Clinton issued 38 *executive orders*, 96 proclamations, and 57 other directives (notices, determinations, messages, memoranda). So far this calendar year, he has issued fewer than two dozen *executive orders*, but that number is no measure of the energy of the Executive Branch.

While the President himself is issuing presidential directives of various sorts, the departments and agencies of the Executive Branch are issuing their own numerous and frequently burdensome rules, orders, regulations, findings, and judgments. President Clinton himself has not issued an unusual number of *executive orders*, but the Clinton-era Executive Branch has been unusually active. The record of recent Presidents can be seen in the following table (and suggests that perhaps our President is aspiring to be another Carter):

<u>President (Term)</u>	<u>Average Number of Executive Orders Issued Per Year</u>	<u>Average Number of Federal Register Pages Published Per Year</u>
Nixon (1969-74)	63	29,312
Ford (1975-76)	63	58,647
Carter (1977-1980)	78	72,350
Reagan (1981-1988)	51	54,334
Bush (1989-1992)	37	59,518
Clinton (1993-June, 1988)	47	69,015

The "number of pages published in the *Federal Register*" is only a rough measure of the size and weight of the Federal Government, but rough measures can be helpful measures. It is important to know that a President who averages slightly fewer formal *executive orders* each year than did Ronald Reagan also presides over an Executive Branch that publishes 27 percent more pages in the *Federal Register* than were published during Mr. Reagan's terms (that's a difference of nearly 15,000 pages every year).

The annual regulatory burden of the Federal Government is about \$500 billion and 6 billion hours. With his strategy on executive action, Mr. Clinton seems determined to raise those numbers.

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SOURCES: The quotation from the *L.A. Times* is from the on-line text of Elizabeth Shogren's article, "President plans blitz of executive orders: Clinton intent on pressing social reforms." Directives issued by presidents are brought together in compilations of Title 3 of the *Code of Federal Regulations*. A CRS Report reviewed the compilations and identified 14 species of presidential action (some of which are now of historical significance only). H. Relyea, "Presidential Directives," CRS Rept. for Congress, No. 95-139 GOV (Jan. 11, 1995). The *Federal Register* is required to publish "presidential proclamations and executive orders, except those not having general applicability and legal effect . . ." and "documents or classes of documents that the President may determine from time to time have general applicability and legal effect." 44 U.S.C. §1505(a) (1994 ed.). The presidential actions for calendar year 1997 were counted by RPC using *Code of Federal Regulations*, Title 3, Tables 1, 2, & 3 (1997 comp., rev. Jan. 1, 1998). The data on executive orders issued by presidents are from, J. Contrubis, "Executive Orders and Proclamations," CRS Rept. for Congress, No. 95-772A, at p. 25 (July 3, 1995) (updated by RPC for President Clinton's later years). The data on pages published in the *Federal Register* are from N. Ornstein, T. Mann, M. Malbin, *Vital Statistics on Congress 1997-1998*, Table 6-5, supplemented by additional data for 3 years. The costs of the Federal regulatory burden are taken from the prepared testimony of Jim Miller, Former Director of OMB, before the Subcomm. on Commercial & Admin. Law of the House Judiciary Committee, Feb. 6, 1995 (LEXIS printout).